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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,943	08/22/2001	Thomas W. Obrock	1-15090	8876

1678 7590 05/07/2003

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EXAMINER

ANDERSON, GERALD A

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,943

Applicant(s)

OBROCK ET AL.

Examiner

JERRY A ANDERSON

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1,6,7,9-18 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) 2-5,19-21 and 27-100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,9-18 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 6, 7, 9-18 and 22-26 have been considered but are moot in view of the new ground(s) of rejection. The applicant argues that Ferdinand fails to contain liquids because it has notches and openings and telescoping parts and does not disclose contain a liquid on the shelf. The Examiner disagrees because Ferdinand has a barrier consisting of an intergral upturned edges 178 and 194 and end caps 24 as set out in the applicant's claim 1. The fact that Ferdinand also notches and openings and telescoping parts that do not contain liquid to the shelf is irrelevant because this additional structure provides additional functions for the shelf assembly. Ferdinand does not disclose containing a liquid on the shelf, however the recitation of a newly discovered function or property inherently possessed by things in the prior art does not cause a claim drawn to these things to distinguish over the prior art. The PTO may require the applicant to prove that the prior art does not possess the characteristics relied on. In re Swinehart and Sfiligoj 169 USPQ 226 (1971). The Examiner also points out that as claimed the shelf does not contain spilled liquids because the claim requires "at least one upwardly turned portion" and if the shelf has only one upturned portion it will not function as argued.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guanter. Guanter is cited showing a shelf 1 with upturned portions 2, 4 and end caps 5.

Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6, 7, 9-14 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guanter as cited above and further in view of Neal and the ordinary skill of one versed in the art. Guanter fails to show a shelf of glass, flange dimensions or a seal. Neal is cited showing a shelf with a seal between the shelf and the end caps. The selection of a well known material based on its suitability for the intended use and

the size and shape of an element are considered an obvious matter of design choice. Here the use of a soda-lime-silicate glass for the shelf is considered to be an obvious matter of design choice for one having an ordinary skill in the art. The size and shape of the flange are considered to be an obvious matter of design choice for one having an ordinary skill in the art. Therefore it would have been obvious for one having an ordinary skill in the art to have modified Guanter adding a seal between the shelf and the end caps in view of Thomas and by using soda-lime-silicate glass for the shelf, to have turned the flange 30 to 90 degrees and to have made flanges .157 to .315 inches wide are within the ability of one having an ordinary skill in the art.

This action is not FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Anderson whose telephone number is 703 038 2202. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703 308 24668. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 3597 for regular communications and 703 306 4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 2197.

Jaa
May 3, 2003


GERALD A. ANDERSON
PATENT EXAMINER